

Applicant : Herbert Howell Waddell
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element of the claim.

"A claim is anticipated only if each and every element as set forward in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 2USPQ2d 111051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim." Richardson v. Suzuki Motor Co., 9USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1 is the only independent claim, and all others are dependent claims. Therefore, claim 1 contains the elements of the invention which states:

An apparatus for gathering, picking up and carrying materials comprising

- a) two grasping elements which each have shafts with grasping means at one end, and
- b) a flexible coupling means which can be moved along the shafts of the grasping elements to connect them together while permitting each of them to rotate along the axes of their shafts and to pivot with respect to each other so that the grasping heads can be brought together or moved apart from each other.

Davis employs two grasping elements with shafts and grasping means (shovels) at one end. It also has a coupling device, which is fabricated from malleable iron. "Malleable iron" is a "term of art" to describe iron with a composition that permits it to be shaped by a hammer (or mallet, hence malleable). Malleable iron is not brittle like some forms of iron, so was,

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and still is, used for high impact uses, such as in hammers and pickaxes. Webster's New World Dictionary defines malleable iron as "cast iron made from pig iron by long heating at a high temperature and slow cooling: it is especially strong and malleable". The name is still used, as in Ferra et al., Method of preparing high nodule malleable iron and its named product, US 6,024,804, Feb. 4, 2000, where various forms of iron are described in detail. In modern usage, the adjective "malleable" may have different meanings when not part of the "malleable iron" expression, e.g. a malleable personality might be changeable or flexible although it obviously could not be hammered into a new shape. However, it is respectfully submitted that "malleable iron" shaped as in the Davis apparatus is hard and rigid, and cannot be considered flexible in the same way that the applicants coupling is. Davis uses a rigid malleable iron coupling to firmly hold the specially shaped shafts of his device in a single configuration that is useful as a post hole digger. When the device of Davis is assembled for use, the square shaft of one shovel is held in a square sleeve that forms one part of the coupling. The special crooked square shaft of the other shovel is held in a three-sided square sleeve. The fourth side of the sleeve is closed by a metal rod, which permits this shovel to pivot in opposition to the other shovel. The square cross-section of the coupling sleeves prevents rotation of the shovels about the axes of their shafts. To function in its intended manner, the Davis device must have a rigid, unyielding coupling. If the shovels are moved out of their one operating position, they perform no useful function as an apparatus.